

## **REMARKS**

Responsive to the Office Action mailed February 22, 2008, on the above-referenced patent application, Applicants respectfully request reconsideration of the application. No amendments have been made. Claims 1, 5, 7-8, 10-15, 17 and 21-26 are pending.

### **The Office Action**

The Examiner rejected claims 1, 5, 7, 8, 10-15, 17 and 21-26 under 35 U.S.C. §102(e) as being anticipated by U.S. Publication No. 2003/0216138 to Higuchi.

Higuchi discloses a cellular mobile telephone apparatus having circuits for transmitting various pre-stored messages to a calling party calling the user of the mobile telephone (i.e. the called party). As stated in paragraph [0069], the messages used when an incoming call is received may be classified into two types: an absence message which may be transmitted when the user is absent, and a message for notifying a calling party of a situation which the user is currently experiencing. The absence message is not applicable to Applicant's claimed subject matter since it does not pertain to the called party being on the line and having call waiting.

Applicant's claim 1 claims "the wireless communications network determining that the called party terminal's line is busy". Higuchi does not disclose this claim limitation.

Applicant's claim 1 claims "the wireless communications network determining that the called party terminal has call waiting". Higuchi does not disclose the called party having call waiting.

Applicant's claim 1 claims "the wireless communications network delivering a "call waiting no answer" message to the calling party terminal notifying the calling party that the called party has call waiting after the call pickup timer expires". Higuchi does not disclose this claim limitation. The absence message sent in Higuchi is not applicable. The other type of message disclosed in Higuchi pertaining to a message for notifying a calling party of a situation which the called party is currently experiencing is not positively recited as a call waiting no answer message notifying the calling party that the called party has call waiting. Higuchi does not disclose the called party having call

waiting. Further, this second type of message sent in Higuchi is not sent after a call pickup timer expires. Higuchi teaches using a timer to determine the called party is absent, and thereafter sending the absence message to the calling party, as described in paragraphs [0053], [0054] and [0087], and shown in FIGS. 3A, 4, 5A. 8 and 9.

Applicant's claim 1 claims "the wireless communications network determining that an undelivered message awaits the called party after the called party terminal's line is no longer busy; and the wireless communications network delivering the message from the calling party to the called party terminal when the called party terminal's line is no longer busy. Higuchi does not teach either of these two claim limitations.

For these reasons, claim 1, and claims 5, 7, 8, 10-15, 21 and 22 depending therefrom, are patentable.

Claim 17 is also patentable over Higuchi for reasons similar to those stated with regard to claim 1 above. Higuchi does not teach "means for determining that the called party terminal's line is busy", "means for determining that the called party terminal has call waiting", "means for delivering a "call waiting no answer" message to the calling party terminal after the call pickup timing expires notifying the calling party that the called party has call waiting", "means for determining that an undelivered message awaits the called party after the called party terminal's line is no longer busy", and "means for delivering the message from the calling party to the called party terminal when the called party terminal's line is no longer busy" as claimed in claim 17. For these reasons claim 17, as well as claims 23-26 depending therefrom, are patentable.

**CONCLUSION**

For the reasons detailed above, it is respectfully submitted all claims remaining in the application (Claims 1, 5, 7, 8, 10-15, 17, 21-26) are now in condition for allowance. The foregoing comments do not require unnecessary additional search or examination.

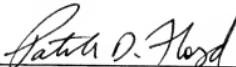
In the event the Examiner considers personal contact advantageous to the disposition of this case, he/she is hereby authorized to telephone Patrick D. Floyd, at (216) 861-5582.

Respectfully submitted,

Fay Sharpe LLP

June 23, 2008

Date

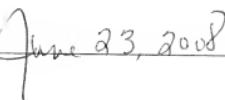
  
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June 23, 2008